

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Genaro Produce Incorporated,) PACA-D Docket No. **19-J-0153**
)
Respondent.)

**Decision and Order GRANTING AMS’s Motion
for Decision Without Hearing by Reason of Admissions**

Appearances:

Christopher Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave SW, Washington, DC 20250, for the Complainant, AMS;¹ and

Genaro Aragon, representative of the Respondent, Genaro Produce Incorporated.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) (“PACA”); the regulations promulgated thereunder by the Secretary of Agriculture (7 C.F.R. §§ 46.1 through 46.45) (“Regulations”); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Associate Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“AMS” or “Complainant”), initiated this proceeding by filing a complaint alleging that Genaro Produce Incorporated (“Respondent”) willfully violated the PACA. On May 4, 2020, AMS moved for a decision without hearing based on admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R.

¹ The Complainant is the Associate Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“AMS” or “Complainant”).

§ 1.139) and in accordance with the policy set forth by the Judicial Officer in *Scamcorp, Inc.*, 57 Agric. Dec. 527 (U.S.D.A. 1998).²

For the reasons discussed herein, I find that no hearing is warranted in this matter and a decision on the written record is appropriate.

Procedural History

On September 26, 2019, AMS filed a disciplinary complaint against Respondent. The Complaint alleged that, during the period of September 2016 through October 2018, Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to ten sellers for 104 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce in the total amount of \$284,981.65.³ Moreover, the Complaint requested:

1. That unless Respondent fails to file an answer within the time allowed, *or admits all the material allegations of this Complaint*, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the PACA; and
2. That the Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. §499b(4)), and publish the facts and circumstances of Respondent's violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 3-4 (emphasis added).

On October 17, 2019, Respondent filed a timely response ("Answer") to the Complaint,⁴

² See Motion at 1-2.

³ See Complaint at 2-3.

⁴ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on October 1, 2019. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due by October 21, 2019.

which included several attachments.⁵ The Answer did not deny the material allegations of the Complaint but provided, in pertinent part:

I Genaro Aragon formally owner of Genaro Produce Inc. would like to take this opportunity to respond to the complaint I received on September 26 2019. I want first to point out that we at Genaro Produce inc. have ceased all operation since October 2018 and closed all accounts as well. I also would like to state that my company was also formally close using the Miami Dade website on February 2019. Regarding the balance owed there are some error; Burma Farms stated I owe \$20,653.00 my balance is \$16,816.00, Wayne E. Bailey \$81,249.00 my balance is \$71,476.76, and H&S Produce \$56,204.40 I have \$46,497.00 attach are my statement's as proof.

In addition of closing my company doors on October 2018 there have been many Paca license companies that owed Genaro Produce Inc. open balance that never paid. The following companies are as follows Produce Connection \$95,807.00, M.E. Ramos Produce \$16,068.00, So Fresh Produce \$50,873.00, American Fresh Produce \$13,609.00, Tropical Fresh \$20,458.50, The Green Guys Produce \$19,984.15, Hialeah Tomatoes \$8,168.00, Sunrise Fresh Produce \$9,473.00, O.C. of Miami \$13,609.00 and Agrosale who is in this complaint also owes Genaro Produce inc. \$1,584.00; just to name a few. [REDACTED] (b) (6) [REDACTED]. Due to nonpayment plus [REDACTED] my company fell through hardship and I believe it will be impossible at this time for me to collect on any of these accounts and pay what was owed by Genaro Produce Inc. I have attached balance statement of all companies mention above plus a few others.

Thank you for allowing me to explain my currents dilemma. Our intentions were not to owe money to the above companies. . . .

Answer at 1.

On May 4, 2020, AMS filed a Motion for Decision Without Hearing and proposed Decision Without Hearing by Reason of Default (“Proposed Decision”)⁶ on the basis that

⁵ Attached to Respondent’s Answer were copies of the following documents: a filing titled “Summons – Personal Service on a Natural Person” (Case No. 2019-025628-CC-25, County Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida); Vendor Open Balance sheets for Wayne E. Bailey, Buurma Farms, H&S Produce, and Agrosale; and balance Statements reflecting Respondent’s transactions with various produce companies.

⁶ See Motion at 1-2 (“Complainant hereby moves, pursuant to section 1.139 of the Rules of Practice Governing Formal Adjudicatory Procedures Instituted by the Secretary [Under] Various Statutes (7 C.F.R. § 1.139) (Rules of Practice), for a Decision Without Hearing by Reason of

“Respondent has admittedly not paid promptly and in full the past-due produce debt identified in the Complaint.”⁷ Respondent has not filed any objections thereto.⁸

Authorities

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (“Rules of Practice” or “Rules”), set forth at 7 C.F.R. §§ 1.130 *et seq.*, apply to the adjudication of this matter. Pursuant to section 1.136 (7 C.F.R. § 1.136), a respondent is required to file an answer within twenty days after service of a complaint.⁹ The Rules provide that an answer shall “[c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent.”¹⁰ Moreover, “failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation.”¹¹ With regard to such admission, section 1.139 (7 C.F.R. § 1.139) provides:

The failure to file an answer, or the admission by the answer of the all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which

Admissions. Complainant also moves for a Decision Without Hearing under the policy set forth by the Judicial Officer in *In re Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547-549 (1998)(and in other case precedent relating to the subject of failure to pay promptly under the PACA . . .).”).

⁷ Motion at 2.

⁸ United States Postal Service records reflect that the Motion for Decision Without Hearing and Proposed Decision were sent to Respondent via certified mail and delivered on May 13, 2020. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due by June 2, 2020. Respondent has not filed any objections.

⁹ 7 C.F.R. § 1.136(a).

¹⁰ 7 C.F.R. § 1.136(b)(1).

¹¹ 7 C.F.R. § 1.136(c).

shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. *If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.*

7 C.F.R. § 1.139.

Also applicable to the instant proceeding are sections 2(4) and 8(a) of the PACA (7 U.S.C. §§ 499b(4), 499h(a)). Section 2(4) requires merchants and dealers to make "full payment promptly" for perishable agricultural commodities, usually within ten days of acceptance, unless the parties have agreed to different terms prior to the purchase.¹² Specifically, section 2(4) makes it unlawful "[f]or any commission merchant, dealer, or broker to . . . fail or refuse truly and correctly to account and make full payment promptly in respect of any such transaction in any such commodity to the person with whom such transaction is had."¹³ Section 8(a) provides:

Whenever . . . the Secretary determines, as provided in section 499f of this title, that any commission merchant, dealer, or broker has violated any of the provisions of section 499b of this title, . . . the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

7 U.S.C. § 499h(a).

In cases where a PACA licensee has failed to make full or prompt payment of perishable agricultural commodities, the Department's policy is straightforward:

In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved *or will achieve* full compliance with the PACA within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a "no-pay" case.

¹² See 7 C.F.R. §§ 46.2(aa)(5), (11).

¹³ 7 U.S.C. § 499b(4).

Scamcorp, Inc., 57 Agric. Dec. 527, 548-49 (U.S.D.A. 1998). Further, “[i]n any ‘no-pay’ case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of PACA, will be revoked.”¹⁴

Discussion

I. Respondent Has Admitted Failing to Make Full Payment Promptly in Accordance with the PACA and Controlling Case Law.

The PACA requires licensed produce dealers to make full payment promptly for fruit and vegetable purchases within ten days after the produce is accepted, provided that parties may elect to use different payment terms so long as the terms are reduced to writing prior to the transaction.¹⁵ In cases where a respondent fails to make full payment promptly and “is not in full compliance within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the [matter] will be treated as a ‘no-pay’ case.”¹⁶ “Full compliance” requires a respondent to have paid all its produce sellers and “have no credit agreements with produce sellers for more than 30 days.”¹⁷

In Appendix A to the Complaint (attached hereto and incorporated herein by reference), AMS identified ten sellers to whom Respondent failed to make full payment promptly, in the total amount of \$284,981.65, for 104 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in the course of interstate and foreign commerce during the period of September 2016 through October 2018.¹⁸ Respondent was served with the Complaint

¹⁴ *Scamcorp, Inc.*, 57 Agric. Dec. 527, 549 (U.S.D.A. 1998).

¹⁵ 7 C.F.R. § 46.2(aa)(5), (11).

¹⁶ *Scamcorp, Inc.*, 57 Agric. Dec. at 548-549.

¹⁷ *Id.* at 549.

¹⁸ *See* Appendix A.

on October 1, 2019.¹⁹ Therefore, in accordance with *Scamcorp*, Respondent had until January 29, 2020 to attain full compliance with the PACA.²⁰

In its Answer, Respondent does not deny that it failed to timely pay sellers for perishable agricultural commodities;²¹ instead, Respondent contends there “are some error[s]” regarding the balances alleged to be owed to three sellers.²² Specifically, Respondent asserts that: (1) Buurma Farms, Inc. is owed \$16,816.00 rather than the \$20,653.00 listed in Appendix A to the Complaint; (2) Wayne E. Bailey Produce Company is owed \$71,476.76 rather than the \$81,249.00 listed in Appendix A to the Complaint; and (3) H&S Produce and Packing, Inc. is owed \$46,497.00 rather than the \$56,082.75 listed in Appendix A to the Complaint.²³

Respondent also claims that Agrosale, Inc.—a seller listed in Appendix A as being owed \$4,013.00 by Respondent—owes Respondent \$1,534.00.²⁴ And with regard to *all* of the debt listed in Appendix A to the Complaint, Respondent states that “many P[ACA] licensee companies” owe Respondent “open balance[s] that [were] never paid” and [REDACTED]

(b) (6) [REDACTED], alluding that these events contributed to Respondent’s failure to pay the sellers.²⁵

¹⁹ See *supra* note 4; 7 C.F.R. § 1.147(c)(1) (“Any complaint . . . shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party [or] last known principal place of business of the attorney or representative of record of such party[.]”).

²⁰ See *Scamcorp, Inc.*, 57 Agric. Dec. at 548-49.

²¹ See *Van Buren Cty. Fruit Exch., Inc.*, 51 Agric. Dec. 733, 740 (U.S.D.A. 1992) (holding that the failure to deny an allegation of a complaint is deemed admitted by virtue of the respondent’s failure to deny the allegation); *Kaplinsky*, 47 Agric. Dec. 613, 617 (U.S.D.A. 1988).

²² Answer at 1.

²³ See *id.*; Appendix A.

²⁴ See Answer at 1; Appendix A.

²⁵ Answer at 1.

The explanations provided in Respondent's Answer are not an acceptable defense to liability in a case such as this, where a complaint has been filed alleging violations of section 2(4) of the PACA due to the failure to make full payment promptly.²⁶ As the Judicial Officer stated in *Scamcorp*: "PACA requires *full payment promptly*, and commission merchants, dealers, and brokers are required to be in compliance with the payment provisions of the PACA at all times."²⁷ Here, Respondent has specifically admitted that, as of the date the Answer was filed, Respondent owed a total of *at least* \$134,789.46 to three sellers.²⁸ Even assuming *arguendo* that Respondent had paid the amounts it claims, Respondent has nonetheless admitted to owing more than a *de minimis* amount to produce sellers.²⁹

Furthermore, Respondent has made no assertion—in its Answer or in any other filing³⁰—that full payment has been made or that full compliance will be achieved pursuant to the parameters set forth by *Scamcorp*.³¹ To the contrary, the Answer states that although Respondent's "intentions were not to owe money," Respondent "believe[s] it will be impossible

²⁶ See, e.g., *Finer Food Sales Co.*, 41 Agric. Dec. 1154, 1171 (U.S.D.A. 1982), *aff'd sub nom. Finer Food Sales Co., Inc. v. Block*, 708 F.2d 774 (D.C. Cir. 1983) ("[E]ven if it were determined that respondent had a good excuse for the failures to pay involved here, it has been repeatedly held under the Act that all excuses are routinely rejected in determining whether payment violations occurred or whether violations were willful since 'the Act calls for payment-not excuses.'" (quoting *Kafcsak*, 39 Agric. Dec. 683, 686 (U.S.D.A. 1980))).

²⁷ *Scamcorp, Inc.*, 57 Agric. Dec. at 548.

²⁸ See *supra* note 22 and accompanying text.

²⁹ See *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question); *Fava & Co.*, 46 Agric. Dec. 79, 81 (U.S.D.A. 1984) (Ruling on Certified Question) (holding that a hearing is not required where "the amount presently due and unpaid would be *de minimis*, e.g., less than \$5,000").

³⁰ As previously stated, Respondent did not file any objections to AMS's Motion for Decision Without Hearing.

³¹ See *Scamcorp, Inc.*, 57 Agric. Dec. at 548-49.

at this time . . . to . . . pay what was owed by Genaro Produce Inc.”³² Accordingly, I find that Respondent has not achieved full compliance with the PACA within 120 days after service of the Complaint.

II. Respondent’s PACA Violations Were Repeated, Flagrant, and Willful.

The Secretary of Agriculture may revoke the license of a dealer who is found to have committed repeated, flagrant, and willful violations of the PACA.³³ Where a dealer has committed repeated, flagrant, and willful violations of the PACA but has no license to revoke, the appropriate sanction is publication of the facts and circumstances of the violations.³⁴

First, Respondent’s violations in this case were repeated. Violations are “repeated” under the PACA when they are committed multiple times, non-simultaneously.³⁵ As Respondent failed to pay ten sellers promptly and in full for 104 lots of perishable agricultural commodities over a two-year period, its violations were clearly repeated.³⁶

Respondent’s violations were also flagrant. Flagrancy is determined by evaluating the number of violations, total money involved, and length of time in which the violations occurred.³⁷ As previously discussed, Respondent itself admitted to owing a total of at least

³² Answer at 1.

³³ See 7 U.S.C. § 499h(a); 5 U.S.C. § 588(c); *Norinsberg v. U.S. Dep’t of Agric.*, 47 F.3d 1224, 1225 (D.C. Cir. 1995).

³⁴ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2002); *Scamcorp, Inc.*, 57 Agric. Dec. at 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

³⁵ See *H.C. MacClaren, Inc. v. U.S. Dep’t of Agric.*, 342 F.3d 584, 592 (6th Cir. 2003); *Zwick v. Freeman*, 373 F.2d 110, 115 (2d Cir. 1967); *Five Star Food Distribs., Inc.*, 56 Agric. Dec. 880, 895 (U.S.D.A. 1997).

³⁶ See Appendix A; Answer at 1.

³⁷ *Five Star Food Distribs., Inc.*, 56 Agric. Dec. at 895; *Havana Potatoes of N.Y. Corp.*, 55 Agric. Dec. 1234, 1270 (U.S.D.A. 1996); see *Reese Sales Co. v. Hardin*, 458 F.2d 183, 185, 187 (9th Cir. 1972).

\$134,789.46 to three of the sellers named in Appendix A to the Complaint.³⁸ By failing to pay that money—far more than a *de minimis* amount—to multiple sellers and still owing that money years later, Respondent has committed flagrant PACA violations.³⁹ Respondent submits no evidence to the contrary.

Lastly, Respondent's violations were willful.

A violation is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements. Willfulness is reflected by Respondent's violations of express requirements of the PACA (7 U.S.C. § 499b(4)) and the Regulations (7 C.F.R. § 46.2(aa)) and in the length of time during which the violations occurred and the number and dollar amount of violative transactions involved.

Scamcorp, Inc., 57 Agric. Dec. 527, 552-53 (U.S.D.A. 1998). Given the many transactions, substantial amount of debt, and continuation of violations over a two-year period in this case, I find that Respondent's violations were willful in that Respondent knew or should have known it did not have sufficient funds with which to comply with the prompt-payment provisions of the PACA.⁴⁰

III.A Decision Without Hearing Is Appropriate.

It is well settled that “a respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when

³⁸ See *supra* notes 22, 28, and accompanying text.

³⁹ AMS is not required to prove—and I am not required to find—the exact number of unpaid produce sellers or the exact amount Respondent owes to each seller. See *Baiardi Chain Food Corp.*, 64 Agric. Dec. at 1834-26; see also *Hunts Point Tomato Co.*, 64 Agric. Dec. 1914, 1929-31 (U.S.D.A. 2005).

⁴⁰ *The Square Group, LLC*, 75 Agric. Dec. at 695.

there is no material issue of fact on which a meaningful hearing can be held.”⁴¹ Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) allows for a decision without hearing by reason of admissions: “The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing.”⁴²

I find no genuine issues of fact that would require a hearing in this case. Respondent has admitted the material allegations of the Complaint and filed no objections to AMS’s Motion for Decision Without Hearing.⁴³ As the amount admittedly owed is not *de minimis*, I need not determine the exact amount Respondent has failed to pay.⁴⁴

Where, as in the present case, a complainant moves for default and the respondent files no meritorious objections,⁴⁵ the Rules of Practice provide that decision and order shall be entered without further procedure:

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be

⁴¹ *H. Schnell & Co.*, 57 Agric. Dec. 1722, 1729 (U.S.D.A. 1998); see, e.g., *KDLO Enters., Inc.*, 70 Agric. Dec. 1098, 1104 (U.S.D.A. 2011); *Kirby Produce Co.*, 58 Agric. Dec. 1011, 1027 (U.S.D.A. 1999).

⁴² 7 C.F.R. § 1.139 (emphasis added).

⁴³ See *id.*

⁴⁴ See *The Square Group, LLC*, 75 Agric. Dec. at 695 (“[E]ven if certain debts are disputed, no hearing is required if the sum of all undisputed debt is enough to make the total more than *de minimis*.”); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. at 82-83 (“[U]nless the amount admittedly owed is *de minimis*, there is no basis for a hearing to determine the precise amount owed.”).

⁴⁵ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondents via certified mail and delivered on July 22, 2019. Respondents had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondents’ objections were due on or before August 12, 2019. Respondents have not filed any objections.

served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. *If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.*

7 C.F.R. § 1.139 (emphasis added).

Based on Respondent's admissions, and upon Complainant's motion for the issuance of a decision without hearing, the following Findings of Fact, Conclusions, and Order are entered without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Genaro Produce Incorporated is or was a corporation incorporated and existing under the laws of the state of Florida. Respondent's business and mailing address was 1200 N.W. 22nd Street, Bays 71-90, Miami, Florida 33142.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20120989 was issued to Respondent on May 10, 2012. This license terminated on May 10, 2018, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), after Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period of September 2016 through October 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint (attached hereto and incorporated by reference), failed to make full payment promptly to ten sellers for 104 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$284,981.65 shown on Appendix A; OR, in accordance with Respondent's Answer, subtracting from AMS's amount about \$24,000.00, in the total amount of more than \$260,000.00.

Conclusions

1. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.
2. Respondent Genaro Produce Incorporated's failure to make full payment promptly with respect to the transactions referenced in Finding of Fact No. 3 above and as set forth in Appendix A to the Complaint constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. The total unpaid balance due to sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.⁴⁶
4. As Respondent's license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's PACA violations.⁴⁷

ORDER

1. AMS's Motion for Decision Without Hearing is GRANTED.
2. A finding is made that Respondent Genaro Produce Incorporated has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
3. The facts and circumstances of Respondent Genaro Produce Incorporated's violations, as set forth above, shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Finality

This Decision and Order becomes final and effective thirty-five (35) days after service upon the Respondent, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within thirty (30) days after service pursuant to section 1.145 of the

⁴⁶ See *The Square Group, LLC*, 75 Agric. Dec. at 695; *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. at 82-83.

⁴⁷ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. at 1832; *Scamcorp, Inc.*, 57 Agric. Dec. at 571 n.23; *Hogan Distrib., Inc.*, 55 Agric. Dec. at 633.

Rules of Practice (7 C.F.R. § 1.145). See Appendix B.

Copies of this “Decision and Order GRANTING AMS’s Motion for Decision Without Hearing by Reason of Admissions” shall be served by the Hearing Clerk on each of the parties. The Hearing Clerk will use both certified mail and regular mail for the Respondent.

Issued this 26th day of June 2020 at Washington, D.C.



Jill S. Clifton
Administrative Law Judge

see Appendix A (that was attached to the Complaint); and
see Appendix B (regarding appeal to the Judicial Officer).

Hearing Clerk’s Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 202-720-4443

SM.OHA.HearingClerks@USDA.GOV

Appendix A

Seller & Location	No. Lots	Commodity	Date Accepted	Date Payment Due	Amount Past Due & Unpaid
1 Buurma Farms, Inc. Willard, OH	3	MXVG	09/06/16 to 09/26/16	09/16/16 to 10/06/16	\$20,653.00
2 Wayne E. Bailey Produce Company Chadbourn, NC	23	Sweet Potatoes	02/14/17 to 08/17/17	02/24/17 to 08/27/17	\$81,249.00
3 Veg Fresh, NY Inc. Bronx, NY	1	Ginger	03/11/17	03/21/17	\$3,780.00
4 Dayoub Marketing, Inc. Fredonia, NY	6	Cabbage	05/14/17 to 07/09/17	05/24/17 to 07/19/17	\$15,910.00
5 Mineral King Produce LLC Visalia, CA	3	MXFV	05/31/17 to 07/19/17	06/10/17 to 07/29/17	\$55,204.40
6 H&S Produce and Packing, Inc. Pembroke Pine, FL	8	Potatoes	07/03/17 to 09/21/17	08/02/17 to 10/21/17	\$56,082.75
7 Ham Produce LLC Snow Hill, NC	1	Cabbage	11/18/17	12/08/17	\$8,890.00
8 Thomas Fruits International Montreal, Quebec, CA	3	MXVG	12/08/17 to 01/12/18	12/29/17 to 02/02/18	\$36,569.50
9 Agrosale, Inc. Miami, FL Origin: CR, EC	4	MXVG	05/01/18 to 06/12/18	05/22/18 to 07/03/18	\$4,013.00
10 Domingo Produce Corp. Miami, FL	52	MXFT	08/01/18 to 09/29/18	08/11/18 to 10/09/18	\$2,630.00
10 Sellers	104	Lots			<u>\$284,981.65</u>

APPENDIX B

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145